

ANDREA C. FERSTER  
LAW OFFICES  
1100 SEVENTEENTH STREET, N.W., 10TH FL.  
WASHINGTON, D.C. 20036

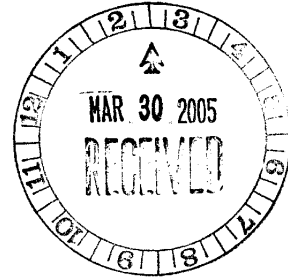
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Public Record

TEL (202) 974-5142 FAX (202) 331-9680

March 30, 2005



Mr. Vernon Williams, Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 713  
Washington, D.C. 20036

Re: Burlington Northern Railroad Company -- Abandonment Exemption -- in  
Klickitat County, WA, AB 6 (Sub-Nos. 346X and 335X).

Dear Mr. Williams:

213642 213645

Enclosed please find an original and ten copies of a Trail Owners' Motion to Expedite the  
Disposition of the Petition to Re-open AB 6, Sub-Nos. 346X and 335X Filed By Zoller, *et al.*

Please feel free to contact me at (202) 974-5142, if you have any questions or need any  
additional information concerning these filings.

Very truly yours,

Andrea C. Ferster, General Counsel  
Rails to Trails Conservancy

Enc.

MAR 31 2005

BEFORE THE SURFACE TRANSPORTATION BOARD

Part of  
Public Record

Burlington Northern Railroad )  
Company -- Abandonment Exemption -- ) AB 6 (Sub-no. 346X)  
in Klickitat County, WA )  
)  
Burlington Northern Railroad )  
Company -- Abandonment Exemption -- ) AB 6 (Sub-no. 335X)  
in Klickitat County, WA )

213642

213645



**Trail Owners' Motion to Expedite the Disposition of the Petition to Re-open  
AB 6, Sub-Nos. 346X and 335X Filed By Zoller, *et al.***

Washington State Parks and Recreation Commission, Rails to Trails Conservancy, and Klickitat Trail Conservancy (hereinafter "Trail Owners"), hereby file this motion to expedite the disposition of the petition filed by Zoller *et al* to re-open the above-captioned proceedings. As should by now be abundantly clear, the Zoller petition raises wholly meritless claims that the railbanked rail corridor between Klickitat and Goldendale, in Klickitat County, Washington, formerly owned by the Burlington Northern ("BN") Railroad Company, had lost its connection to the national rail system. These poorly substantiated claims of "severance" were dispositively rebutted in the thoroughly documented replies filed by the Burlington Northern Santa Fe Railroad, and the Trail Owners. Perhaps recognizing the impossibility of sustaining their burden of proof based on the record as it now stands, the Zollers have sought to defer a ruling by this Board by filing a motion to hold their own petition in abeyance for 120 days while they investigate and presumably prepare a rebuttal, notwithstanding that this Board's regulations bar replies to replies. See 49 C.F.R. § 1114.13(c) ("[a] reply to a reply is not permitted.")

As the Zoller's motion to hold their petition in abeyance strong suggests, it has now become clear that the real purpose behind the Zollers' frivolous filings is to prolong the pendency of the

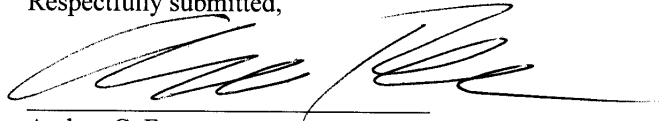
Petition, notwithstanding its lack of merit, as a means of deterring investment in the Klickitat Trail by the U.S. Forest Service, which will be the manager of the portion of the former BN corridor that lies between Lyle and Klickitat, Washington. As indicated in the attached letter from Daniel T. Harkenrider, Area Manager of the Columbia River Gorge National Scenic Area, the U.S. Forest Service was prepared to invest nearly a quarter of a million dollars to develop trail heads, improve trail conditions, and address safety issues on the trail. However, as the letter indicates, the availability of these funds is limited to this fiscal year which ends on September 30, 2005. Therefore, Mr. Harkenrider has stated that, in light of the pending petition, challenging the railbanked status of the corridor filed by Zoller, *et al.*,

I cannot authorize the use of these funds as long as the issue of the underlying ownership remains certain. *Time is of the essence since I must decide to either obligate the available funds or return them no later than June 15<sup>th</sup> of this year.*

Letter to Andrea Ferster, RTC, from Daniel T. Harkenrider, USFS (March 25, 2005) (emphasis added) (attached hereto as Exhibit A).

These appropriated funds from the USFS are intended to provide critical public safety improvements on the Klickitat trail. These funds are likely to be irretrievably lost if the USFS elects not to obligate these funds due to the mere pendency of the Zoller petition. Accordingly, the Trail Owners urgently request that this Board expedite its consideration of the Zoller petition so that it is resolved prior to June 15, 2005. Any further delay in resolving this frivolous petition will be highly prejudicial to the Trail Owners and the public, and encourage the filing of frivolous petitions designed solely to delay and obstruct lawful public works projects.

Respectfully submitted,



Andrea C. Ferster  
1100 17th Street, N.W. 10th Fl.  
Washington, D.C. 20036  
(202) 974-5142

Charles H. Montange  
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(206) 546-1936

for Klickitat Trail Conservancy and Rails to Trails  
Conservancy

Barbara Herman  
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(360) 586-4034

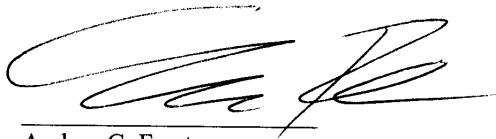
for Washington State Parks and  
Recreation Commission

CERTIFICATE OF SERVICE

I hereby certify that, on March 30, 2005, a copy of the foregoing Motion to Expedite was served by mail on:

Sidney Strickland  
Burlington Northern Santa Fe Corporation  
700 13<sup>th</sup> Street, N.W. Suite 220  
Washington, D.C. 20005-5915

Cecilia Fex  
Ackerson Kauffman Fex, PC  
1250 H Street, N.W. Suite 850  
Washington, D.C. 20005

A handwritten signature in black ink, appearing to read 'Andrea C. Ferster', written over a horizontal line.

Andrea C. Ferster



United States  
Department of  
Agriculture

Forest  
Service

Columbia River Gorge  
National Scenic Area

902 Wasco Ave., Suite 200  
Hood River, OR 97031  
(541) 308-1700  
FAX (541) 386-1916

File Code: 23302330

Date: March 25, 2005

Ms. Andrea Ferster  
General Counsel  
Rail to Trail Conservancy  
1100 17<sup>th</sup> St. NW  
Washington, DC 20036  
Washington, DC 20036

Dear MS. Ferster:

I am writing to you to request that the Rail to Trail Conservancy seek an expedited hearing with the Surface Transportation Board regarding Docket NO. AB-6 (Sub-No. 335X), Burlington Northern Railroad Company – Abandonment Exemption – Between Klickitat and Goldendale, WA and Docket No. AB-6 (Sub-No. 346X), Burlington Northern Railroad Company – Abandonment Exemption – In Klickitat County, Washington.

The Forest Service, in partnership with Washington State Parks and Recreation, will be the on the ground manager for that portion of the former railed that lies between Lyle, Washington and Klickitat Washington. As such, the Forest Service is prepared to invest nearly a quarter of a million dollars to develop trailheads, improve trail conditions and address safety issues on the trail. The availability of these funds is limited to this fiscal year which ends on September 30<sup>th</sup> 2005. It is my responsibility to ensure that these funds are expended as authorized and in a responsible manner. I cannot authorize the use these funds as long as the issue of the underlying ownership remains uncertain. Time is of the essence since I must decide to either obligate the available funds or return them no later than June 15<sup>th</sup> of this year.

The Rail to Trail Conservancy's support of this request is appreciated. You may contact me directly regarding this request at: 541-308-1706 or email me at: [dharkenrider@fs.fed.us](mailto:dharkenrider@fs.fed.us).

Again, thank you for your attention to this matter.

Sincerely,

DANIEL T. HARKENRIDER  
Area Manager



Caring for the Land and Serving People

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